

AMENDED IN SENATE JULY 1, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 679

Introduced by Assembly Member Chavez

February 19, 2003

An act to ~~amend~~ add Article 6 (commencing with Section 10237) to Chapter 3 of Part 1 of Division 4 of, and to repeal Section 10229 of, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 679, as amended, Chavez. Real estate.

Existing law, the Real Estate Law, requires the licensure of a person by the Real Estate Commissioner to engage in the business of, act in the capacity of, or advertise or assume to act as, a real estate broker or a real estate salesman within this state. Existing law requires a real estate broker to file certain information with the commissioner relative to the conducting of a transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, otherwise known as a multilender transaction, as specified. Existing law prohibits the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon real property senior to them, from exceeding certain percentages of the current market value of the real property. Existing law authorizes the percentages to be exceeded if a broker makes a specified determination and a written statement or

appraisal establishing the determination is made. A violation of the Real Estate Law is a crime.

This bill would revise these provisions to make them applicable to transactions involving the sale or offer to sell a series of notes secured directly by interests in one or more parcels of real property or the sale of undivided interests in a note secured directly by one or more parcels of real property. The bill would prohibit the amount of those notes or interests and encumbrances from exceeding certain percentages of the current market value for each parcel of real property if the notes or interests are secured by more than one parcel of real property. The bill would require the written statement or appraisal delivered to each purchaser to include each parcel of real property securing the notes or interests.

Because a violation of the bill's provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 10229 of the Business and Professions~~
2 ~~SECTION 1. Section 10229 of the Business and Professions~~
3 ~~Code is repealed.~~
4 ~~10229.—Any transaction that involves the sale of or offer to sell~~
5 ~~a series of notes secured directly by an interest in the same real~~
6 ~~property, or the sale of undivided interests in a note secured~~
7 ~~directly by real property equivalent to a series transaction, shall~~
8 ~~comply with all of the following:~~
9 ~~(a) (1) A notice in the following form and containing the~~
10 ~~following information shall be filed with the commissioner within~~
11 ~~30 days after the first transaction and within 30 days of any~~
12 ~~material change in the information required in the notice:~~
13



TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10229 of the Business and Professions Code.

() Original Notice () Amended Notice

1. Name of Broker conducting transaction under Section 10229:

2. Broker license identification number: _____

3. List the month the fiscal year ends: _____

4. Broker's telephone number: _____

5. Firm name (if different from "1"):

6. Street address (main location):

and Street City State ZIP Code

7. Mailing address (if different from "6"):



8. ~~Servicing Agent. Identify by name, address, and telephone number
the person or entity who will act as the servicing agent in
transactions pursuant to Section 10229 (including the undersigned
Broker if that is the case):~~

9. ~~Total number of multilender notes arranged:~~ _____

10. ~~Total number of interests sold to investors on the
multilender's notes:~~ _____

11. ~~Inspection of trust account (before answering this question, review
the provisions of paragraph (3) of subdivision (j) of Section
10229).~~

CHECK ONLY ONE OF THE FOLLOWING:

(-) ~~The undersigned Broker is (or expects to be) required to file reports
of inspection of its trust account(s) with the Real Estate
Commissioner pursuant to paragraph (3) of subdivision (j) of Section
10229.~~

~~Amount of Multilender Payments Collected Last Fiscal Quarter:~~ _____

~~Total Number of Investors Due Payments Last Fiscal Quarter:~~ _____

(-) ~~The undersigned Broker is NOT (or does NOT expect to be) required to
file reports of inspection of its trust account(s) with the Real Estate
Commissioner pursuant to paragraph (3) of subdivision (j) of Section
10229.~~

12. ~~Signature. The contents of this notice are true and correct.~~

—Date

Type Name of Broker

Signature of Broker or of Designated Officer of
Corporate Broker

Type Name of Person(s) Signing This Notice

~~NOTE: AN AMENDED NOTICE MUST BE FILED BY THE
BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE
IN THE INFORMATION REQUIRED TO BE SET FORTH
HEREIN.~~

~~(2) A broker or person who becomes the servicing agent for
notes or interest sold pursuant to this section, upon which
payments due during any period of three consecutive months in the
aggregate exceed one hundred twenty-five thousand dollars
(\$125,000) or the number of persons entitled to the payments
exceeds 120, shall file the notice required by paragraph (1) with
the commissioner within 30 days after becoming the servicing
agent.~~

~~(b) All advertising employed for transactions under this section
shall (1) show the name of the broker and (2) comply with Section
10235 of the Business and Professions Code and Sections 260.302
and 2848 of Title 10 of the California Code of Regulations.
Brokers and their agents are cautioned that a reference to a
prospective investor that a transaction is conducted under this
section may be deemed misleading or deceptive if this
representation may reasonably be construed by the investor as an
implication of merit or approval of the transaction.~~

~~(c) The real property directly securing the notes or interests is
located in this state, the note or notes are not by their terms subject
to subordination to any subsequently created deed of trust upon the
real property, and the note or notes are not promotional notes
secured by liens on separate parcels of real property in one
subdivision or in contiguous subdivisions. For purposes of this
subdivision, a promotional note means a promissory note secured
by a trust deed, executed on unimproved real property or executed
after construction of an improvement of the property but before the
first purchase of the property as so improved, or executed as a
means of financing the first purchase of the property as so~~

1 improved, that is subordinate, or by its terms may become
2 subordinate, to any other trust deed on the property. However, the
3 term “promotional note” does not include either of the following:

4 (1) A note that was executed in excess of three years prior to
5 being offered for sale.

6 (2) A note secured by a first trust deed on real property in a
7 subdivision that evidences a bona fide loan made in connection
8 with the financing of the usual cost of the development in a
9 residential, commercial, or industrial building or buildings on the
10 property under a written agreement providing for the
11 disbursement of the loan funds as costs are incurred or in relation
12 to the progress of the work and providing for title insurance
13 ensuring the priority of the security as against mechanic’s and
14 materialmen’s liens or for the final disbursement of at least 10
15 percent of the loan funds after the expiration of the period for the
16 filing of mechanic’s and materialmen’s liens.

17 (d) The notes or interests are sold by or through a real estate
18 broker, as principal or agent. At the time the interests are originally
19 sold or assigned, neither the broker nor an affiliate of the broker
20 shall have an interest as owner, lessor, or developer of the property
21 securing the loan, or any contractual right to acquire, lease, or
22 develop the property securing the loan. This provision does not
23 prohibit a broker from conducting the following transactions if, in
24 either case, the disclosure statement furnished by the broker
25 pursuant to subdivision (k) discloses the interest of the broker or
26 affiliate in the transaction and the circumstances under which the
27 broker or affiliate acquired the interest:

28 (1) A transaction in which the broker or an affiliate of the
29 broker is acquiring the property pursuant to a foreclosure under,
30 or sale pursuant to, a deed of trust securing a note for which the
31 broker is the servicing agent or that the broker sold to the holder
32 or holders.

33 (2) A transaction in which the broker or an affiliate of the
34 broker is reselling from inventory property acquired by the broker
35 pursuant to a foreclosure under, or sale pursuant to, a deed of trust
36 securing a note for which the broker is the servicing agent or that
37 the broker sold to the holder or holders.

38 (e) (1) The notes or interests shall not be sold to more than 10
39 persons, each of whom meets one or both of the qualifications of
40 income or net worth set forth below and signs a statement, which

1 shall be retained by the broker for four years, conforming to the
2 following:

3
4 Transaction Identifier: _____

5
6 Name of Purchaser: _____ Date: _____

7
8 Check either one of the following, if true:

9 () My investment in the transaction does not exceed 10% of my net worth,
10 exclusive of home, furnishings, and automobiles.

11
12 () My investment in the transaction does not exceed 10% of my adjusted
13 gross income for federal income tax purposes for my last tax year or,
14 in the alternative, as estimated for the current year.

15
16 _____
17 _____ Signature

18
19 ~~(2) The number of offerees shall not be considered for the~~
20 ~~purposes of this section.~~

21 ~~(3) A husband and wife and their dependents, and an individual~~
22 ~~and his or her dependents, shall be counted as one person.~~

23 ~~(4) A retirement plan, trust, business trust, corporation, or other~~
24 ~~entity that is wholly owned by an individual and the individual's~~
25 ~~spouse or the individual's dependents, or any combination thereof,~~
26 ~~shall not be counted separately from the individual, but the~~
27 ~~investments of these entities shall be aggregated with those of the~~
28 ~~individual for the purposes of the statement required by paragraph~~
29 ~~(1). If the investments of any entities are required to be aggregated~~
30 ~~under this subdivision, the adjusted gross income or net worth of~~
31 ~~these entities may also be aggregated with the net worth, income,~~
32 ~~or both, of the individual.~~

33 ~~(5) The "institutional investors" enumerated in subdivision (i)~~
34 ~~of Section 25102 or subdivision (c) of Section 25104 of the~~
35 ~~Corporations Code, or in a rule adopted pursuant thereto, shall not~~
36 ~~be counted.~~

37 ~~(f) The notes or interests of the purchasers shall be identical in~~
38 ~~their underlying terms, including the right to direct or require~~
39 ~~foreclosure, rights to and rate of interest, and other incidents of~~
40 ~~being a lender, and the sale to each purchaser pursuant to this~~

~~section shall be upon the same terms, subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued. This subdivision does not preclude different selling prices for interests to the extent that these differences are reasonably related to changes in the market value of the loan occurring between the sales of these interests. The interest of each purchaser shall be recorded.~~

~~(g) (1) Except as provided in paragraph (2), the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, shall not exceed the following percentages of the current market value of the real property, as determined in writing by the broker or appraiser pursuant to Section 10232.6, plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit of the holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:~~

(A)	Single-family residence, owner occupied	80%
(B)	Single-family residence, not owner occupied	75%
(C)	Commercial and income-producing properties	65%
(D)	Single-family residentially zoned lot or parcel which has installed offsite improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel	65%
(E)	Land that has been zoned for (and if required, approved for subdivision as) commercial or residential development ..	50%
(F)	Other real property	35%

~~(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market~~

1 ~~value of unimproved real property, except in the case of a~~
2 ~~single family zoned lot or parcel as defined in paragraph (1),~~
3 ~~which shall not exceed 65 percent of the current fair market value~~
4 ~~of that lot or parcel, plus the amount insured as specified in~~
5 ~~paragraph (1). A written statement shall be prepared by the broker~~
6 ~~that sets forth the material considerations and facts that the broker~~
7 ~~relies upon for his or her determination, which shall be retained as~~
8 ~~a part of the broker's record of the transaction. Either a copy of the~~
9 ~~statement or the information contained therein shall be included in~~
10 ~~the disclosures required pursuant to subdivision (k).~~

11 ~~(3) A copy of the appraisal or the broker's evaluation shall be~~
12 ~~delivered to each purchaser. The broker shall advise purchasers of~~
13 ~~their right to receive a copy. For purposes of this paragraph,~~
14 ~~"appraisal" means a written estimate of value based upon the~~
15 ~~assembling, analyzing, and reconciling of facts and value~~
16 ~~indicators for the real property in question. A broker shall not~~
17 ~~purport to make an appraisal unless the person so employed is~~
18 ~~qualified on the basis of special training, preparation, or~~
19 ~~experience.~~

20 ~~(h) The documentation of the transaction shall require that (1)~~
21 ~~a default upon any interest or note is a default upon all interests or~~
22 ~~notes and (2) the holders of more than 50 percent of the record~~
23 ~~beneficial interests of the notes or interests may govern the actions~~
24 ~~to be taken on behalf of all holders in accordance with Section~~
25 ~~2941.9 of the Civil Code in the event of default or foreclosure for~~
26 ~~matters that require direction or approval of the holders, including~~
27 ~~designation of the broker, servicing agent, or other person acting~~
28 ~~on their behalf, and the sale, encumbrance, or lease of real property~~
29 ~~owned by the holders resulting from foreclosure or receipt of a~~
30 ~~deed in lieu of foreclosure. The terms called for by this subdivision~~
31 ~~may be included in the deed of trust, in the assignment of interests,~~
32 ~~or in any other documentation as is necessary or appropriate to~~
33 ~~make them binding on the parties.~~

34 ~~(i) (1) The broker shall not accept any purchase or loan funds~~
35 ~~or other consideration from a prospective lender or purchaser, or~~
36 ~~directly or indirectly cause the funds or other consideration to be~~
37 ~~deposited in an escrow or trust account, except as to a specific loan~~
38 ~~or note secured by a deed of trust that the broker owns, is~~
39 ~~authorized to negotiate, or is unconditionally obligated to buy.~~

~~(2) All funds received by the broker from the purchasers or lenders shall be handled in accordance with Section 10145 for disbursement to the persons thereto entitled upon recordation of the interests of the purchasers or lenders in the note and deed of trust. No provision of this section shall be construed as modifying or superseding applicable law regulating the escrowholder in any transaction or the handling of the escrow account.~~

~~(3) The books and records of the broker or servicing agent, or both, shall be maintained in a manner that readily identifies transactions under this section and the receipt and disbursement of funds in connection with these transactions.~~

~~(4) If required by paragraph (3) of subdivision (j), the review by the independent certified public accountant shall include a sample of transactions, as reflected in the records of the trust account required pursuant to paragraph (1) of subdivision (j), and the bank statements and supporting documents. These documents shall be reviewed for compliance with this section with respect to the handling and distribution of funds. The sample shall be selected at random by the accountant from all these transactions and shall consist of the following: (A) three sales made or 5 percent of the sales made pursuant to this section during the period for which the examination is conducted, whichever is greater, and (B) 10 payments processed or 2 percent of payments processed under this section during the period for which the examination is conducted, whichever is greater.~~

~~(5) For the purposes of this subdivision, the transaction that constitutes a "sale" is the series of transactions by which a series of notes of a maker, or the interests in the note of a maker, are sold or issued to their various purchasers under this section, including all receipts and disbursements in that process of funds received from the purchasers or lenders. The transaction that constitutes a "payment," for the purposes of this subdivision, is the receipt of a payment from the person obligated on the note or from some other person on behalf of the person so obligated, including the broker or servicing agent, and the distribution of that payment to the persons entitled thereto. If a payment involves an advance paid by the broker or servicing agent as the result of a dishonored check, the inspection shall identify the source of funds from which the payment was made or, in the alternative, the steps that are reasonably necessary to determine that there was not a~~

1 ~~disbursement of trust funds. The accountant shall inspect for~~
2 ~~compliance with the following specific provisions of this section:~~
3 ~~paragraphs (1), (2), and (3) of subdivision (i) and paragraphs (1)~~
4 ~~and (2) of subdivision (j).~~

5 ~~(6) Within 30 days of the close of the period for which the~~
6 ~~report is made, or within any additional time as the commissioner~~
7 ~~may in writing allow in a particular case, the accountant shall~~
8 ~~forward to the broker or servicing agent, as the case may be, and~~
9 ~~to the commissioner, the report of the accountant, stating that the~~
10 ~~inspection was performed in accordance with this section, listing~~
11 ~~the sales and the payments examined, specifying the nature of the~~
12 ~~deficiencies, if any, noted by the accountant with respect to each~~
13 ~~sale or payment, together with any further information as the~~
14 ~~accountant may wish to include, such as corrective steps taken~~
15 ~~with respect to any deficiency so noted, or stating that no~~
16 ~~deficiencies were observed. If the broker meets the threshold~~
17 ~~criteria of Section 10232, the report of the accountant shall be~~
18 ~~submitted as part of the quarterly reports required under Section~~
19 ~~10232.25.~~

20 ~~(j) The notes or interests shall be sold subject to a written~~
21 ~~agreement that obligates a licensed real estate broker, or a person~~
22 ~~exempted from the licensing requirement for real estate brokers~~
23 ~~under Chapter 3 (commencing with Section 10130) of Part 1 of~~
24 ~~Division 4, to act as agent for the purchasers or lenders to service~~
25 ~~the note or notes and deed of trust, including the receipt and~~
26 ~~transmission of payments and the institution of foreclosure~~
27 ~~proceedings in the event of a default. A copy of this servicing~~
28 ~~agreement shall be delivered to each purchaser. The broker shall~~
29 ~~offer to the lenders or purchasers the services of the broker or one~~
30 ~~or more affiliates of the broker, or both, as servicing agent for each~~
31 ~~transaction conducted pursuant to this section. The agreement~~
32 ~~shall require all of the following:~~

33 ~~(1) (A) That payments received on the note or notes be~~
34 ~~deposited immediately to a trust account maintained in accordance~~
35 ~~with this section and with the provisions for trust accounts of~~
36 ~~licensed real estate brokers contained in Section 10145 and Article~~
37 ~~15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of~~
38 ~~the California Code of Regulations.~~

39 ~~(B) That payments deposited pursuant to subparagraph (A)~~
40 ~~shall not be commingled with the assets of the servicing agent or~~

1 used for any transaction other than the transaction for which the
2 funds are received.

3 (2) That payments received on the note or notes shall be
4 transmitted to the purchasers or lenders pro rata according to their
5 respective interests within 25 days after receipt thereof by the
6 agent. If the source for the payment is not the maker of the note,
7 the agent shall inform the purchasers or lenders of the source for
8 payment. A broker or servicing agent who transmits to the
9 purchaser or lenders the broker's or servicing agent's own funds
10 to cover payments due from the borrower but unpaid as a result of
11 a dishonored check may recover the amount of the advances from
12 the trust fund when the past due payment is received. However,
13 this section does not authorize the broker, servicing agent, or any
14 other person to issue, or to engage in any practice constituting, any
15 guarantee or to engage in the practice of advancing payments on
16 behalf of the borrower.

17 (3) If the broker or person who is or becomes the servicing
18 agent for notes or interests sold pursuant to this section upon which
19 the payments due during any period of three consecutive months
20 in the aggregate exceed one hundred twenty-five thousand dollars
21 (\$125,000) or the number of persons entitled to the payments
22 exceeds 120, the trust account or accounts of that broker or affiliate
23 shall be inspected by an independent certified public accountant at
24 no less than three-month intervals during the time the volume is
25 maintained. Within 30 days after the close of the period for which
26 the review is made, the report of the accountant shall be forwarded
27 as provided in paragraph (5) of subdivision (i). If the broker is
28 required to file an annual report pursuant to subdivision (n) or
29 Section 10232.2, the quarterly report pursuant to this subdivision
30 need not be filed for the last quarter of the year for which the annual
31 report is made. For the purposes of this subdivision, an affiliate of
32 a broker is any person controlled by, controlling, or under common
33 control with the broker.

34 (4) Unless the servicing agent will receive notice pursuant to
35 Section 2924b of the Civil Code, the servicing agent shall file a
36 request for notice of default upon any prior encumbrances and
37 promptly notify the purchasers or lenders of any default on the
38 prior encumbrances or on the note or notes subject to the servicing
39 agreement.

1 ~~(5) The servicing agent shall promptly forward copies of the~~
2 ~~following to each purchaser or lender:~~

3 ~~(A) Any notice of trustee sale filed on behalf of the purchasers~~
4 ~~or lenders:~~

5 ~~(B) Any request for reconveyance of the deed of trust received~~
6 ~~on behalf of the purchasers or lenders:~~

7 ~~(k) The broker shall disclose in writing to each purchaser or~~
8 ~~lender the material facts concerning the transaction on a disclosure~~
9 ~~form adopted or approved by the commissioner pursuant to~~
10 ~~Section 10232.5, subject to the following:~~

11 ~~(1) The disclosure form shall include a description of the terms~~
12 ~~upon which the note and deed of trust are being sold, including the~~
13 ~~terms of the undivided interests being offered therein, including~~
14 ~~the following:~~

15 ~~(A) In the case of the sale of an existing note:~~

16 ~~(i) The aggregate sale price of the note:~~

17 ~~(ii) The percent of the premium over or discount from the~~
18 ~~principal balance plus accrued but unpaid interest:~~

19 ~~(iii) The effective rate of return to the purchasers if the note is~~
20 ~~paid according to its terms:~~

21 ~~(iv) The name and address of the escrowholder for the~~
22 ~~transaction:~~

23 ~~(v) A description of, and the estimated amount of, each cost~~
24 ~~payable by the seller in connection with the sale and a description~~
25 ~~of, and the estimated amount of, each cost payable by the~~
26 ~~purchasers in connection with the sale:~~

27 ~~(B) In the case of the origination of a note:~~

28 ~~(i) The name and address of the escrowholder for the~~
29 ~~transaction:~~

30 ~~(ii) The anticipated closing date:~~

31 ~~(iii) A description of, and the estimated amount of, each cost~~
32 ~~payable by the borrower in connection with the loan and a~~
33 ~~description of, and the estimated amount of, each cost payable by~~
34 ~~the lenders in connection with the loan:~~

35 ~~(2) A copy of the written statement or information contained~~
36 ~~therein, as required by paragraph (2) of subdivision (g), shall be~~
37 ~~included in the disclosure form:~~

38 ~~(3) Any interest of the broker or affiliate in the transaction, as~~
39 ~~described in subdivision (d), shall be included with the disclosure~~
40 ~~form:~~

~~(4) When the particular circumstances of a transaction make information not specified in the disclosure form material or essential to keep the information provided in the form from being misleading, and the other information is known to the broker, the other information shall also be provided by the broker.~~

~~(l) The broker or servicing agent shall furnish any purchaser of a note or interest, upon request, with the names and addresses of the purchasers of the other notes or interests in the loan.~~

~~(m) No agreement in connection with a transaction covered by this section shall grant to the real estate broker, the servicing agent, or any affiliate of the broker or agent the option or election to acquire the interests of the purchasers or lenders or to acquire the real property securing the interests. This subdivision shall not prohibit the broker or affiliate from acquiring the interests, with the consent of the purchasers or lenders whose interests are being purchased, or the property, with the consent of the purchasers or lenders, if the consent is given at the time of the acquisition.~~

~~(n) Each broker who conducts transactions under this section, or broker or person who becomes the servicing agent for notes or interest sold pursuant to this section, who meets the criteria of paragraph (3) of subdivision (j) shall file with the commissioner an annual report of a review of its trust account. The report shall be prepared and filed in accordance with subdivision (a) of Section 10232.2 and the rules and procedures thereunder of the commissioner. That report shall cover the broker's transactions under this section and, if the broker also meets the threshold criteria set forth in Section 10232, the broker's transactions subject to that section shall be included as well.~~

~~(o) Each broker conducting transactions pursuant to this section, or broker or person who becomes the servicing agent for notes or interest sold pursuant to this section, who meets the criteria of paragraph (3) of subdivision (j) shall file with the commissioner a report of the transactions that is prepared in accordance with subdivision (e) of Section 10232.2. If the broker also meets the threshold criteria of Section 10232, the report shall include the transactions subject to that section as well. This report shall be confidential pursuant to subdivision (f) of Section 10232.2.~~

~~(p) The jurisdiction of the Commissioner of Corporations under the Corporate Securities Law of 1968 shall be neither~~

1 ~~limited nor expanded by this section. Nothing in this section shall~~
2 ~~be construed to supersede or restrict the application of the~~
3 ~~Corporate Securities Law of 1968. A transaction under this section~~
4 ~~shall not be construed to be a transaction involving the issuance of~~
5 ~~securities subject to authorization by the Real Estate~~
6 ~~Commissioner under subdivision (e) of Section 25100 of the~~
7 ~~Corporations Code.~~

8 ~~(q) Nothing in this section shall be construed to change the~~
9 ~~agency relationships between the parties where they exist or limit~~
10 ~~in any manner the fiduciary duty of brokers to borrowers, lenders,~~
11 ~~and purchasers of notes or interests in transactions subject to this~~
12 ~~section.~~

13 ~~(r) For the purposes of this section, the following definitions~~
14 ~~shall apply:~~

15 ~~(1) "Broker" means a person licensed as a broker under this~~
16 ~~part.~~

17 ~~(2) "Affiliate" means a person controlled by, controlling, or~~
18 ~~under common control with, the broker.~~

19 ~~(3) "Servicing agent" means the real estate broker or person~~
20 ~~exempted from the licensing requirements for real estate brokers~~
21 ~~under Chapter 3 (commencing with Section 10130) of Part 1 of~~
22 ~~Division 4, to act as agent for the purchasers or lenders to service~~
23 ~~the notes and deeds of trust, including the handling the receipt and~~
24 ~~transmission of payments and the institution of foreclosure~~
25 ~~proceedings in the event of a default.~~

26 ~~(4) Except as provided in paragraph (4) of subdivision (i), the~~
27 ~~terms "sale" and "offer to sell," shall have the same meaning as~~
28 ~~set forth in Section 25017 of the Corporations Code and include~~
29 ~~the acts of negotiating and arranging the transaction.~~

30 ~~(s) (1) If any person other than a real estate broker makes or~~
31 ~~keeps any of the books, accounts, or other records maintained in~~
32 ~~connection with a transaction described in this section, the~~
33 ~~provisions of this section and of any regulation or order issued~~
34 ~~under this section shall apply to the person with respect to the~~
35 ~~performance of those services and with respect to those books,~~
36 ~~accounts, and other records to the same extent as if the person were~~
37 ~~the broker.~~

38 ~~(2) If any person other than an affiliate of a broker makes or~~
39 ~~keeps any of the books, accounts, or other records maintained in~~
40 ~~connection with a transaction described in this section, or in the~~

~~case of an affiliate other than a parent or subsidiary of the broker, the provisions of this section and of any regulation or order issued under this section shall apply to the person with respect to those books, accounts, and other records to the same extent as if the person were the affiliate.~~

SEC. 2. Article 6 (commencing with Section 10237) is added to Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, to read:

Article 6. Claim of Exemption From Securities Qualification

10237. Any transaction that involves the sale of or offer to sell a series of notes secured directly by interests in one or more parcels of real property, or the sale of undivided interests in a note secured directly by one or more parcels of real property equivalent to a series transaction, shall comply with all of the following:

(a) (1) A notice in the following form and containing the following information shall be filed with the commissioner within 30 days after the first transaction and within 30 days of any material change in the information required in the notice:

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10229 of the Business and Professions Code.

() Original Notice () Amended Notice

1. Name of Broker conducting transaction under Section 10229:

2. *Broker license identification number:* _____
3. *List the month the fiscal year ends:* _____
4. *Broker's telephone number:* _____
5. *Firm name (if different from "I"):*

6. *Street address (main location):*

<i># and Street</i>	<i>City</i>	<i>State</i>	<i>ZIP Code</i>
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7. *Mailing address (if different from "6"):*

8. *Servicing Agent: Identify by name, address, and telephone number the person or entity who will act as the servicing agent in transactions pursuant to Section 10229 (including the undersigned Broker if that is the case):*

9. *Total number of multilender notes arranged:* _____
10. *Total number of interests sold to investors on the multilender's notes:* _____
11. *Inspection of trust account (before answering this question, review the provisions of paragraph (3) of subdivision (j) of Section 10229).*

CHECK ONLY ONE OF THE FOLLOWING:



() *The undersigned Broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.*

Amount of Multilender Payments Collected Last Fiscal Quarter: _____

Total Number of Investors Due Payments Last Fiscal Quarter: _____

() *The undersigned Broker is NOT (or does NOT expect to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.*

12. *Signature. The contents of this notice are true and correct.*

Date

Type Name of Broker

*Signature of Broker or of Designated Officer of
Corporate Broker*

Type Name of Person(s) Signing This Notice

NOTE: AN AMENDED NOTICE MUST BE FILED BY THE BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE IN THE INFORMATION REQUIRED TO BE SET FORTH HEREIN.

(2) *A broker or person who becomes the servicing agent for notes or interest sold pursuant to this section, upon which payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars (\$125,000) or the number of persons entitled to the payments exceeds 120, shall file the notice required by paragraph (1) with the commissioner within 30 days after becoming the servicing agent.*

(b) *All advertising employed for transactions under this section shall (1) show the name of the broker and (2) comply with Section*

1 10235 of the Business and Professions Code and Sections 260.302
2 and 2848 of Title 10 of the California Code of Regulations. Brokers
3 and their agents are cautioned that a reference to a prospective
4 investor that a transaction is conducted under this section may be
5 deemed misleading or deceptive if this representation may
6 reasonably be construed by the investor as an implication of merit
7 or approval of the transaction.

8 (c) Each parcel of real property directly securing the notes or
9 interests is located in this state, the note or notes are not by their
10 terms subject to subordination to any subsequently created deed of
11 trust upon the real property, and the note or notes are not
12 promotional notes secured by liens on separate parcels of real
13 property in one subdivision or in contiguous subdivisions. For
14 purposes of this subdivision, a promotional note means a
15 promissory note secured by a trust deed, executed on unimproved
16 real property or executed after construction of an improvement of
17 the property but before the first purchase of the property as so
18 improved, or executed as a means of financing the first purchase
19 of the property as so improved, that is subordinate, or by its terms
20 may become subordinate, to any other trust deed on the property.
21 However, the term “promotional note” does not include either of
22 the following:

23 (1) A note that was executed in excess of three years prior to
24 being offered for sale.

25 (2) A note secured by a first trust deed on real property in a
26 subdivision that evidences a bona fide loan made in connection
27 with the financing of the usual cost of the development in a
28 residential, commercial, or industrial building or buildings on the
29 property under a written agreement providing for the disbursement
30 of the loan funds as costs are incurred or in relation to the progress
31 of the work and providing for title insurance ensuring the priority
32 of the security as against mechanic’s and materialmen’s liens or for
33 the final disbursement of at least 10 percent of the loan funds after
34 the expiration of the period for the filing of mechanic’s and
35 materialmen’s liens.

36 (d) The notes or interests are sold by or through a real estate
37 broker, as principal or agent. At the time the interests are originally
38 sold or assigned, neither the broker nor an affiliate of the broker
39 shall have an interest as owner, lessor, or developer of the property
40 securing the loan, or any contractual right to acquire, lease, or

1 develop the property securing the loan. This provision does not
2 prohibit a broker from conducting the following transactions if, in
3 either case, the disclosure statement furnished by the broker
4 pursuant to subdivision (k) discloses the interest of the broker or
5 affiliate in the transaction and the circumstances under which the
6 broker or affiliate acquired the interest:

7 (1) A transaction in which the broker or an affiliate of the
8 broker is acquiring the property pursuant to a foreclosure under,
9 or sale pursuant to, a deed of trust securing a note for which the
10 broker is the servicing agent or that the broker sold to the holder
11 or holders.

12 (2) A transaction in which the broker or an affiliate of the
13 broker is reselling from inventory property acquired by the broker
14 pursuant to a foreclosure under, or sale pursuant to, a deed of trust
15 securing a note for which the broker is the servicing agent or that
16 the broker sold to the holder or holders.

17 (e) (1) The notes or interests shall not be sold to more than 10
18 persons, each of whom meets one or both of the qualifications of
19 income or net worth set forth below and signs a statement, which
20 shall be retained by the broker for four years, conforming to the
21 following:

22
23 Transaction Identifier: _____

24
25 Name of Purchaser: _____ Date: _____

26
27 Check either one of the following, if true:

28 () My investment in the transaction does not exceed 10% of my net worth,
29 exclusive of home, furnishings, and automobiles.

30
31 () My investment in the transaction does not exceed 10% of my adjusted
32 gross income for federal income tax purposes for my last tax year or,
33 in the alternative, as estimated for the current year.

34
35 _____
36 Signature

37
38 (2) The number of offerees shall not be considered for the
39 purposes of this section.

1 (3) A husband and wife and their dependents, and an individual
2 and his or her dependents, shall be counted as one person.

3 (4) A retirement plan, trust, business trust, corporation, or
4 other entity that is wholly owned by an individual and the
5 individual's spouse or the individual's dependents, or any
6 combination thereof, shall not be counted separately from the
7 individual, but the investments of these entities shall be aggregated
8 with those of the individual for the purposes of the statement
9 required by paragraph (1). If the investments of any entities are
10 required to be aggregated under this subdivision, the adjusted
11 gross income or net worth of these entities may also be aggregated
12 with the net worth, income, or both, of the individual.

13 (5) The "institutional investors" enumerated in subdivision (i)
14 of Section 25102 or subdivision (c) of Section 25104 of the
15 Corporations Code, or in a rule adopted pursuant thereto, shall
16 not be counted.

17 (f) The notes or interests of the purchasers shall be identical in
18 their underlying terms, including the right to direct or require
19 foreclosure, rights to and rate of interest, and other incidents of
20 being a lender; and the sale to each purchaser pursuant to this
21 section shall be upon the same terms, subject to adjustment for the
22 face or principal amount or percentage interest purchased and for
23 interest earned or accrued. This subdivision does not preclude
24 different selling prices for interests to the extent that these
25 differences are reasonably related to changes in the market value
26 of the loan occurring between the sales of these interests. The
27 interest of each purchaser shall be recorded.

28 (g) (1) Except as provided in paragraph (2), the aggregate
29 principal amount of the notes or interests sold, together with the
30 unpaid principal amount of any encumbrances upon the real
31 property senior thereto, shall not exceed the following percentages
32 of the current market value of each parcel of the real property, as
33 determined in writing by the broker or appraiser pursuant to
34 Section 10232.6, plus the amount for which the payment of
35 principal and interest in excess of the percentage of current market
36 value is insured for the benefit of the holders of the notes or
37 interests by an insurer admitted to do business in this state by the
38 Insurance Commissioner:

39

1	(A)	Single-family residence, owner occupied	80%
2	(B)	Single-family residence, not owner occupied	75%
3	(C)	Commercial and income-producing properties	65%
4	(D)	Single-family residentially zoned lot or parcel which has	
5		installed offsite improvements including drainage, curbs,	
6		gutters, sidewalks, paved roads, and utilities as mandated	
7		by the political subdivision having jurisdiction over the lot	
8		or parcel	65%
9	(E)	Land that has been zoned for (and if required, approved for	
10		subdivision as) commercial or residential development . .	50%
11	(F)	Other real property	35%

12

13 (2) The percentage amounts specified in paragraph (1) may be
 14 exceeded when and to the extent that the broker determines that the
 15 encumbrance of the property in excess of these percentages is
 16 reasonable and prudent considering all relevant factors
 17 pertaining to the real property. However, in no event shall the
 18 aggregate principal amount of the notes or interests sold, together
 19 with the unpaid principal amount of any encumbrances upon the
 20 property senior thereto, exceed 80 percent of the current fair
 21 market value of improved real property or 50 percent of the current
 22 fair market value of unimproved real property, except in the case
 23 of a single-family zoned lot or parcel as defined in paragraph (1),
 24 which shall not exceed 65 percent of the current fair market value
 25 of that lot or parcel, plus the amount insured as specified in
 26 paragraph (1). A written statement shall be prepared by the broker
 27 that sets forth the material considerations and facts that the broker
 28 relies upon for his or her determination, which shall be retained
 29 as a part of the broker's record of the transaction. Either a copy of
 30 the statement or the information contained therein shall be
 31 included in the disclosures required pursuant to subdivision (k).

32 (3) A copy of the appraisal or the broker's evaluation, for each
 33 parcel of real property securing the notes or interests, shall be
 34 delivered to each purchaser. The broker shall advise purchasers of
 35 their right to receive a copy. For purposes of this paragraph,
 36 "appraisal" means a written estimate of value based upon the
 37 assembling, analyzing, and reconciling of facts and value
 38 indicators for the real property in question. A broker shall not
 39 purport to make an appraisal unless the person so employed is

1 *qualified on the basis of special training, preparation, or*
2 *experience.*

3 *(4) If a note or an interest will be secured by more than one*
4 *parcel of real property, for the purpose of determining the*
5 *maximum amount of the note or interest, each security property*
6 *shall be assigned a portion of the note or interest which shall not*
7 *exceed the percentage of current market value determined by, and*
8 *in accordance with, the provisions of paragraphs (1) and (2).*

9 *(h) The documentation of the transaction shall require that (1)*
10 *a default upon any interest or note is a default upon all interests*
11 *or notes and (2) the holders of more than 50 percent of the record*
12 *beneficial interests of the notes or interests may govern the actions*
13 *to be taken on behalf of all holders in accordance with Section*
14 *2941.9 of the Civil Code in the event of default or foreclosure for*
15 *matters that require direction or approval of the holders, including*
16 *designation of the broker, servicing agent, or other person acting*
17 *on their behalf, and the sale, encumbrance, or lease of real*
18 *property owned by the holders resulting from foreclosure or receipt*
19 *of a deed in lieu of foreclosure. The terms called for by this*
20 *subdivision may be included in the deed of trust, in the assignment*
21 *of interests, or in any other documentation as is necessary or*
22 *appropriate to make them binding on the parties.*

23 *(i) (1) The broker shall not accept any purchase or loan funds*
24 *or other consideration from a prospective lender or purchaser, or*
25 *directly or indirectly cause the funds or other consideration to be*
26 *deposited in an escrow or trust account, except as to a specific loan*
27 *or note secured by a deed of trust that the broker owns, is*
28 *authorized to negotiate, or is unconditionally obligated to buy.*

29 *(2) All funds received by the broker from the purchasers or*
30 *lenders shall be handled in accordance with Section 10145 for*
31 *disbursement to the persons thereto entitled upon recordation of*
32 *the interests of the purchasers or lenders in the note and deed of*
33 *trust. No provision of this section shall be construed as modifying*
34 *or superseding applicable law regulating the escrowholder in any*
35 *transaction or the handling of the escrow account.*

36 *(3) The books and records of the broker or servicing agent, or*
37 *both, shall be maintained in a manner that readily identifies*
38 *transactions under this section and the receipt and disbursement*
39 *of funds in connection with these transactions.*

1 (4) If required by paragraph (3) of subdivision (j), the review
2 by the independent certified public accountant shall include a
3 sample of transactions, as reflected in the records of the trust
4 account required pursuant to paragraph (1) of subdivision (j), and
5 the bank statements and supporting documents. These documents
6 shall be reviewed for compliance with this section with respect to
7 the handling and distribution of funds. The sample shall be
8 selected at random by the accountant from all these transactions
9 and shall consist of the following: (A) three sales made or 5 percent
10 of the sales made pursuant to this section during the period for
11 which the examination is conducted, whichever is greater; and (B)
12 10 payments processed or 2 percent of payments processed under
13 this section during the period for which the examination is
14 conducted, whichever is greater.

15 (5) For the purposes of this subdivision, the transaction that
16 constitutes a “sale” is the series of transactions by which a series
17 of notes of a maker, or the interests in the note of a maker, are sold
18 or issued to their various purchasers under this section, including
19 all receipts and disbursements in that process of funds received
20 from the purchasers or lenders. The transaction that constitutes a
21 “payment,” for the purposes of this subdivision, is the receipt of
22 a payment from the person obligated on the note or from some
23 other person on behalf of the person so obligated, including the
24 broker or servicing agent, and the distribution of that payment to
25 the persons entitled thereto. If a payment involves an advance paid
26 by the broker or servicing agent as the result of a dishonored check,
27 the inspection shall identify the source of funds from which the
28 payment was made or, in the alternative, the steps that are
29 reasonably necessary to determine that there was not a
30 disbursement of trust funds. The accountant shall inspect for
31 compliance with the following specific provisions of this section:
32 paragraphs (1), (2), and (3) of subdivision (i) and paragraphs (1)
33 and (2) of subdivision (j).

34 (6) Within 30 days of the close of the period for which the report
35 is made, or within any additional time as the commissioner may in
36 writing allow in a particular case, the accountant shall forward to
37 the broker or servicing agent, as the case may be, and to the
38 commissioner, the report of the accountant, stating that the
39 inspection was performed in accordance with this section, listing
40 the sales and the payments examined, specifying the nature of the

deficiencies, if any, noted by the accountant with respect to each sale or payment, together with any further information as the accountant may wish to include, such as corrective steps taken with respect to any deficiency so noted, or stating that no deficiencies were observed. If the broker meets the threshold criteria of Section 10232, the report of the accountant shall be submitted as part of the quarterly reports required under Section 10232.25.

(j) The notes or interests shall be sold subject to a written agreement that obligates a licensed real estate broker, or a person exempted from the licensing requirement for real estate brokers under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, to act as agent for the purchasers or lenders to service the note or notes and deed of trust, including the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default. A copy of this servicing agreement shall be delivered to each purchaser. The broker shall offer to the lenders or purchasers the services of the broker or one or more affiliates of the broker, or both, as servicing agent for each transaction conducted pursuant to this section. The agreement shall require all of the following:

(1) (A) That payments received on the note or notes be deposited immediately to a trust account maintained in accordance with this section and with the provisions for trust accounts of licensed real estate brokers contained in Section 10145 and Article 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of the California Code of Regulations.

(B) That payments deposited pursuant to subparagraph (A) shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received.

(2) That payments received on the note or notes shall be transmitted to the purchasers or lenders pro rata according to their respective interests within 25 days after receipt thereof by the agent. If the source for the payment is not the maker of the note, the agent shall inform the purchasers or lenders of the source for payment. A broker or servicing agent who transmits to the purchaser or lenders the broker's or servicing agent's own funds to cover payments due from the borrower but unpaid as a result of a dishonored check may recover the amount of the advances from the trust fund when the past due payment is received. However, this

1 section does not authorize the broker, servicing agent, or any other
2 person to issue, or to engage in any practice constituting, any
3 guarantee or to engage in the practice of advancing payments on
4 behalf of the borrower.

5 (3) If the broker or person who is or becomes the servicing
6 agent for notes or interests sold pursuant to this section upon
7 which the payments due during any period of three consecutive
8 months in the aggregate exceed one hundred twenty-five thousand
9 dollars (\$125,000) or the number of persons entitled to the
10 payments exceeds 120, the trust account or accounts of that broker
11 or affiliate shall be inspected by an independent certified public
12 accountant at no less than three-month intervals during the time
13 the volume is maintained. Within 30 days after the close of the
14 period for which the review is made, the report of the accountant
15 shall be forwarded as provided in paragraph (5) of subdivision (i).
16 If the broker is required to file an annual report pursuant to
17 subdivision (n) or Section 10232.2, the quarterly report pursuant
18 to this subdivision need not be filed for the last quarter of the year
19 for which the annual report is made. For the purposes of this
20 subdivision, an affiliate of a broker is any person controlled by,
21 controlling, or under common control with the broker.

22 (4) Unless the servicing agent will receive notice pursuant to
23 Section 2924b of the Civil Code, the servicing agent shall file a
24 request for notice of default upon any prior encumbrances and
25 promptly notify the purchasers or lenders of any default on the
26 prior encumbrances or on the note or notes subject to the servicing
27 agreement.

28 (5) The servicing agent shall promptly forward copies of the
29 following to each purchaser or lender:

30 (A) Any notice of trustee sale filed on behalf of the purchasers
31 or lenders.

32 (B) Any request for reconveyance of the deed of trust received
33 on behalf of the purchasers or lenders.

34 (k) The broker shall disclose in writing to each purchaser or
35 lender the material facts concerning the transaction on a
36 disclosure form adopted or approved by the commissioner
37 pursuant to Section 10232.5, subject to the following:

38 (1) The disclosure form shall include a description of the terms
39 upon which the note and deed of trust are being sold, including the

1 *terms of the undivided interests being offered therein, including the*
2 *following:*

3 *(A) In the case of the sale of an existing note:*

4 *(i) The aggregate sale price of the note.*

5 *(ii) The percent of the premium over or discount from the*
6 *principal balance plus accrued but unpaid interest.*

7 *(iii) The effective rate of return to the purchasers if the note is*
8 *paid according to its terms.*

9 *(iv) The name and address of the escrowholder for the*
10 *transaction.*

11 *(v) A description of, and the estimated amount of, each cost*
12 *payable by the seller in connection with the sale and a description*
13 *of, and the estimated amount of, each cost payable by the*
14 *purchasers in connection with the sale.*

15 *(B) In the case of the origination of a note:*

16 *(i) The name and address of the escrowholder for the*
17 *transaction.*

18 *(ii) The anticipated closing date.*

19 *(iii) A description of, and the estimated amount of, each cost*
20 *payable by the borrower in connection with the loan and a*
21 *description of, and the estimated amount of, each cost payable by*
22 *the lenders in connection with the loan.*

23 *(C) In the case of a transaction involving a note or interest*
24 *secured by more than one parcel of real property, in addition to the*
25 *requirements of subparagraphs (A) and (B):*

26 *(i) The address, description, and estimated fair market value of*
27 *each property securing the loan.*

28 *(ii) The amount of the available equity in each property*
29 *securing the loan after the loan amount to be apportioned to each*
30 *property is assigned.*

31 *(iii) The loan to value percentage for each property after the*
32 *loan amount to be apportioned to each property is assigned*
33 *pursuant to subdivision (g).*

34 *(2) A copy of the written statement or information contained*
35 *therein, as required by paragraph (2) of subdivision (g), shall be*
36 *included in the disclosure form.*

37 *(3) Any interest of the broker or affiliate in the transaction, as*
38 *described in subdivision (d), shall be included with the disclosure*
39 *form.*

1 (4) When the particular circumstances of a transaction make
2 information not specified in the disclosure form material or
3 essential to keep the information provided in the form from being
4 misleading, and the other information is known to the broker, the
5 other information shall also be provided by the broker.

6 (5) If more than one parcel of real property secures the notes or
7 interests, the disclosure form shall also fully disclose any risks to
8 investors associated with securing the notes or interests with
9 multiple parcels of real property.

10 (l) The broker or servicing agent shall furnish any purchaser
11 of a note or interest, upon request, with the names and addresses
12 of the purchasers of the other notes or interests in the loan.

13 (m) No agreement in connection with a transaction covered by
14 this section shall grant to the real estate broker, the servicing
15 agent, or any affiliate of the broker or agent the option or election
16 to acquire the interests of the purchasers or lenders or to acquire
17 the real property securing the interests. This subdivision shall not
18 prohibit the broker or affiliate from acquiring the interests, with
19 the consent of the purchasers or lenders whose interests are being
20 purchased, or the property, with the consent of the purchasers or
21 lenders, if the consent is given at the time of the acquisition.

22 (n) Each broker who conducts transactions under this section,
23 or broker or person who becomes the servicing agent for notes or
24 interest sold pursuant to this section, who meets the criteria of
25 paragraph (3) of subdivision (j) shall file with the commissioner
26 an annual report of a review of its trust account. The report shall
27 be prepared and filed in accordance with subdivision (a) of Section
28 10232.2 and the rules and procedures thereunder of the
29 commissioner. That report shall cover the broker's transactions
30 under this section and, if the broker also meets the threshold
31 criteria set forth in Section 10232, the broker's transactions
32 subject to that section shall be included as well.

33 (o) Each broker conducting transactions pursuant to this
34 section, or broker or person who becomes the servicing agent for
35 notes or interest sold pursuant to this section, who meets the
36 criteria of paragraph (3) of subdivision (j) shall file with the
37 commissioner a report of the transactions that is prepared in
38 accordance with subdivision (c) of Section 10232.2. If the broker
39 also meets the threshold criteria of Section 10232, the report shall
40 include the transactions subject to that section as well. This report



1 shall be confidential pursuant to subdivision (f) of Section
2 10232.2.

3 (p) The jurisdiction of the Commissioner of Corporations
4 under the Corporate Securities Law of 1968 shall be neither
5 limited nor expanded by this section. Nothing in this section shall
6 be construed to supersede or restrict the application of the
7 Corporate Securities Law of 1968. A transaction under this section
8 shall not be construed to be a transaction involving the issuance
9 of securities subject to authorization by the Real Estate
10 Commissioner under subdivision (e) of Section 25100 of the
11 Corporations Code.

12 (q) Nothing in this section shall be construed to change the
13 agency relationships between the parties where they exist or limit
14 in any manner the fiduciary duty of brokers to borrowers, lenders,
15 and purchasers of notes or interests in transactions subject to this
16 section.

17 (r) For the purposes of this section, the following definitions
18 shall apply:

19 (1) "Broker" means a person licensed as a broker under this
20 part.

21 (2) "Affiliate" means a person controlled by, controlling, or
22 under common control with, the broker.

23 (3) "Servicing agent" means the real estate broker or person
24 exempted from the licensing requirements for real estate brokers
25 under Chapter 3 (commencing with Section 10130) of Part 1 of
26 Division 4, to act as agent for the purchasers or lenders to service
27 the notes and deeds of trust, including the handling the receipt and
28 transmission of payments and the institution of foreclosure
29 proceedings in the event of a default.

30 (4) Except as provided in paragraph (4) of subdivision (i), the
31 terms "sale" and "offer to sell," shall have the same meaning as
32 set forth in Section 25017 of the Corporations Code and include
33 the acts of negotiating and arranging the transaction.

34 (s) (1) If any person other than a real estate broker makes or
35 keeps any of the books, accounts, or other records maintained in
36 connection with a transaction described in this section, the
37 provisions of this section and of any regulation or order issued
38 under this section shall apply to the person with respect to the
39 performance of those services and with respect to those books,

1 accounts, and other records to the same extent as if the person were
2 the broker.

3 (2) If any person other than an affiliate of a broker makes or
4 keeps any of the books, accounts, or other records maintained in
5 connection with a transaction described in this section, or in the
6 case of an affiliate other than a parent or subsidiary of the broker,
7 the provisions of this section and of any regulation or order issued
8 under this section shall apply to the person with respect to those
9 books, accounts, and other records to the same extent as if the
10 person were the affiliate.

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

20
21
22 **All matter omitted in this version of the**
23 **bill appears in the bill as amended in the**
24 **Assembly, April 21, 2003 (JR 11)**
25
26